



MEMORANDUM

TO: Representative Timothy Ramthun
FROM: Michael Gallagher, assistant chief counsel
DATE: November 22, 2021
SUBJECT: The state legislature's power to recall presidential electors

You asked for a memorandum addressing the arguments of Attorney Matt DePerno¹ in his September 23, 2021, memorandum² to the effect that a state legislature has the unilateral power to recall the votes of the state's presidential electors, even after the electors have been certified under state law, their votes counted in Congress, and the new president sworn in.³

NOT
REALLY

While there is no direct parallel in American history for the 2020 presidential election and its continuing aftermath, based on the text itself of the Presidential Electors Clause⁴ in the U.S. Constitution and based on relevant decisions of the U.S. Supreme Court, including an opinion authored by Justice Clarence Thomas analyzing the plain meaning of the Presidential Electors Clause, the state legislature does not have the power to recall presidential electors.

Introduction

NOT
REALLY

The 2020 presidential election was unprecedented. The election occurred in the midst of the COVID-19 global pandemic and saw a dramatic increase in the number of voters voting absentee

Actually, the Election of 1876 was similar with questions about which slate of ELECTORS the Congress should accept from several states. It was resolved NOT according to this Constitution, rather by an "extra" or un-Constitutional Election Commission, devised by Congress. The 1877 Congress ignored the Contingent Vote process of this Constitution. Why? Because it would likely have resulted in Democrat Tilden winning the Electoral Vote as he had won the Popular Vote. A compromise favored the in-power party, the Republican Rutherford B. Hayes, but the Dems. got the end of Reconstruction Martial Law in southern Capitols. In Election of 2020, (due to the 6 Jan 2017 "Insurrection" many informed analysts believe to be a cunning PsyOps or Coup d'Etat) Senate President Pence ignored the US Code section on proper hearings in the case where a Senator and a Representative (or several) challenged any one state (or many states) Electoral Vote counts, again ignoring the Contingent Vote process that the Framers of this Constitution wrote into the document in 1787, a century before.

¹ Matt DePerno is an attorney in Michigan who is currently running for attorney general in that state. His law firm and candidate website may be accessed at <https://www.deper nolaw.com/>.

² DePerno, Matt, "[Final Memo regarding Authority Over Elections and Electors](#)" (September 23, 2021), hereinafter the "DePerno Memo."

³ The DePerno memo also uses the term "decertify" with respect to the action he argues a state legislature may take with respect to a presidential election. There is no process under current law for the Wisconsin Legislature to "decertify" an election. See Appendix A: The Electoral College process in Wisconsin. In any case, whether the state legislature has the power to recall the state's presidential electors in the first place is the more fundamental question. If the legislature does not have that power, it also does not have the power to decertify an election.

⁴ [U.S. Const. art. II, §1, cl. 2.](#)

Yes this U.S. Constitution gives this power to the State Legislature ALONE, thus "Unilaterally". If a Governor or other State public servant acts to deny the Legislature this DUTY, they have violated their OATH to uphold this Constitution for the United States of America, so subject to removal from office!

*FRAUD
"vitiates" any
legal action.
Extensive
ELECTORAL
FRAUD has
been
revealed.*

nationwide. In Wisconsin, 1,969,274 voters cast absentee ballots in the 2020 presidential election, compared with 819,316 absentee ballots cast in the 2016 presidential election.⁵

Additionally, in many states, a number of novel election practices were implemented in the 2020 presidential election with respect to absentee balloting, including expanding voters' eligibility to vote absentee, automatic mailing of absentee ballots to all eligible voters in a state, and extending the deadline for returning absentee ballots.⁶ Novel election practices in Wisconsin included holding absentee ballot collection events in city parks and municipal clerks using absentee ballot drop boxes. Local governments in several swing states, including Wisconsin, accepted millions of dollars in private moneys for purposes of administering the election. More than 200 communities across Wisconsin received grants from the Center for Tech and Civic Life—grants made with moneys donated by Facebook founder Mark Zuckerberg and his wife, Priscilla Chan. The five largest cities in Wisconsin—Milwaukee, Madison, Green Bay, Kenosha, and Racine—received a combined total of \$6.3 million.⁷ There were also widespread allegations of fraud and irregularities in the 2020 presidential election.

Add all of those circumstances to the fact that Donald Trump lost several swing states to Joe Biden by essentially razor-thin margins—in Wisconsin, Trump and Biden were separated by 20,682 votes out of 3,241,050 total votes cast,⁸ and it should surprise no one that many of Trump's supporters cried foul and numerous lawsuits ensued. Nevertheless, the lawsuits were unsuccessful, and on January 6, 2021, the Electoral College votes were counted in a joint session of Congress, with 306 Electoral College votes going to Joe Biden and Kamala Harris, including those of Wisconsin's 10 presidential electors, and 232 Electoral College votes going to Donald Trump and Mike Pence.

Analysis

The DePerno Memo argues that the state legislature has inherent⁹ authority, “upon proof of fraud in the election” but not “all of the fraud,” to recall the votes of the state's presidential electors after the slate of presidential electors has been certified under state law, the electors' votes counted in Congress, and the new president sworn in.¹⁰ The memo argues that the legislature

⁵ Wisconsin Elections Commission, [April 7, 2020 Absentee Voting Report – Exhibit A Absentee Voting Data 2016-2020](#), (Madison, WI: May 15, 2020), 3; Wisconsin Elections Commission, [November 3, 2020 Election Data Report](#), (Madison, WI: February 3, 2021), 12.

⁶ See “[Absentee and Mail Voting Policies in Effect for the 2020 Election](#),” National Conference of State Legislatures, accessed November 20, 2021.

⁷ Patrick Marley and Haley BeMiller, “[Republicans focus on election grants to five cities that favor Democrats, but more than 200 Wisconsin communities got funds](#),” *Milwaukee Journal Sentinel*, March 31, 2021.

⁸ Wisconsin Elections Commission, [2020 Fall General Election Results](#), (Madison, WI: November 3, 2020).

⁹ The DePerno Memo uses the Latin term, “*sua sponte*.” DePerno Memo at 4. In the legal context, that term usually refers to a court's inherent authority to take certain actions without being asked to do so. The memo appears to use the term to mean that the state legislature has inherent power to recall the state's presidential electors of the legislature's own accord.

¹⁰ *Id.* at 1 (referring to an August 14, 2021, memo also authored by Matt DePerno).

may exercise this inherent power outside of the lawmaking process.¹¹ The memo's argument is premised on the power conferred on state legislatures under the Presidential Electors Clause, the rights retained by the people under the Ninth Amendment, and the powers reserved to the states or to the people under the Tenth Amendment.

Just as ~~the 2020 presidential election was unprecedented~~ ^{Not really}, there is no historical or legal precedent for the DePerno Memo's argument. Nevertheless, the memo's argument is not supported by the plain meaning and original understanding of the applicable constitutional texts or by relevant U.S. Supreme Court precedent. This memorandum addresses the key arguments of the DePerno Memo.

State legislatures determine the "manner" of appointment of presidential electors

While the DePerno Memo acknowledges that "it cannot be presumed that any clause in the constitution is intended to be without effect . . . *effect should be given to all the words it uses*,"¹² the memo fails to quote or give any effect to the phrase in the Presidential Electors Clause that is absolutely crucial to any analysis of the state legislature's power under that clause: "in such *manner* as the legislature thereof may direct." This is a glaring omission. ^{Why "glaring omission". DePerno makes a logical & legal assertion}

Article II, section I, clause 2 of the U.S. Constitution, the Presidential Electors Clause, provides in full:

If a State Legislature comes to learn that FRAUD infected the proper Election results in a Federal Election it has the DUTY under this Constitution to act to correct the problem for that election.

Each state shall appoint, *in such manner as the legislature thereof may direct*, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.¹³

In the same manner as the U.S. Congress (especially the House) is the final decision authority for accepting or rejecting a State's slate of Electors, the State legislature appoints or sets the manner for appointment of its State's Electors.

The DePerno Memo glosses over the actual language of the Presidential Electors Clause, focusing instead on longstanding U.S. Supreme Court case law holding that the Presidential Electors Clause confers upon the state "the broadest power of determination" with respect to presidential electors.¹⁴ That is only part of the picture. It omits the constitutional role of the state legislature to establish the *manner* of appointment of presidential electors and how the legislature carries out that role—by passing laws. ^{when, citation?}

If the State Legislature learns that the "manner" it established for fair, honest elections has been made Fraudulent, it is its DUTY to act immediately to correct the FRAUD.

In 2020, the U.S. Supreme Court held unanimously in *Chiafalo v. Washington*¹⁵ that presidential electors may be bound by state law to vote for the candidates for president and vice president to whom the elector is pledged or face removal or penalty. In other words, presidential electors have no inherent authority to vote for a candidate in violation of state law. In so holding, the

Arguably the 2020 decision ignored U.S. Elector History, with many cases of Electors voting for other than the candidate they "stood for". MOST significantly, look at what President Washington warned against in his Sept. 1796 Farewell Address, against "innovations". Weeks later the "Hamilton Innovation" of "State Popular Vote Winner Take All" destroyed the Framers' intent.

¹¹ *Id.* at 4.

¹² *Id.* at 3 (quoting *Marbury v. Madison*, 5 U.S. 137, 174 (1803) (internal quotation marks omitted)).

¹³ U.S. Const. art. II, §1, cl. 2. (emphasis added).

¹⁴ DePerno Memo at 2 (quoting *McPherson v. Blacker*, 146 U.S. 1, 27 (1892)).

¹⁵ *Chiafalo v. Washington*, 140 S. Ct. 2316 (2020).

Supreme Court repeated its description of the Presidential Electors Clause, first stated in 1892, “as ‘conveying the broadest power of determination’ over who becomes an elector.”¹⁶ Case Cite? Argues for legislature recalling, or decertifying an ELECTOR!

The *Chiafalo* decision was unanimous, but Justice Clarence Thomas wrote a concurring opinion in part to address the meaning of the key term “manner” in the Presidential Electors Clause. His opinion is highly instructive with respect to understanding the role of the state legislature under the clause. According to Justice Thomas, the Presidential Electors Clause does not confer a “broad power of determination” with respect to presidential electors. Instead, based on the clause’s plain meaning, Justice Thomas views the clause’s language as “impos[ing] an affirmative obligation on the States to establish the manner for appointing electors.”¹⁷ If an “Affirmative Obligation” to establish the manner, then why not the same “Affirmative Obligation” when the State Legislature learns of FRAUD in its defined Election Process.

As Justice Thomas explains, the plain meaning of the Presidential Electors Clause gives the state legislature the sole role of determining only *how* the state’s presidential electors are to be chosen. According to Justice Thomas, the plain meaning of the term “manner” suggests that the Presidential Electors Clause “requires state legislatures merely to set the approach for selecting Presidential electors, not to impose substantive limitations on whom may become an elector. And determining the ‘Manner’ of appointment certainly does not include the power to impose requirements as to how the electors vote after they are appointed.”¹⁸ If the manner defined has been “Hi-jacked” by Election Fraud, then SL had DUTY to “fix”.

Justice Thomas then shows that historical evidence from the founding supports his plain-meaning analysis. First, he notes that the Framers of the Constitution rejected a proposal to give state legislatures the exclusive power to choose presidential electors, as the original Constitution had done with respect to the appointment of U.S. Senators: This gets into 17th Amendment issue, especially paragraph 2 !

At the Convention, the Framers debated whether Presidential electors should be selected by the state legislatures or by other electors chosen by the voters of each State. Oliver Ellsworth and Luther Martin, for example, thought the President should be chosen by electors selected by state legislatures. Alexander Hamilton, however, preferred a system in which the President would be chosen “by electors chosen by electors chosen by the people.” The final language of Article II “seems to have reconciled [the] contrariety of views by leaving it to the state legislatures” to set the Manner of elector appointment. In context, it is clear that the Framers understood “Manner” in Article II, §1, to refer to the mode of appointing electors—consistent with the plain meaning of the term.¹⁹ AH's 1796 “innovation” crippled the Framers intent for District based election of Electors, in his obsession to defeat his arch-rival Thomas Jefferson. If the 4 Republican electors in NY in 1796 had been assigned to TJ, Jefferson would have won over Adams, 72 to 67.

Second, Justice Thomas finds that his interpretation of the Presidential Electors Clause according to its plain meaning is supported by historical evidence from the states’ ratifying conventions:

¹⁶ *Chiafalo*, 140 S. Ct. at 2324 (quoting McPherson, 146 U.S. at 27).

¹⁷ *Id.* at 2329 (Thomas, J., concurring) (internal quotations and citations omitted).

¹⁸ *Id.* at 2330 (emphasis in original) (internal citations omitted). Justice Thomas argues that the state legislature’s power to bind electors to vote for their pledged candidates is a power reserved to the states or the people under the Tenth Amendment.

¹⁹ *Id.* (internal citations omitted).

This understanding of “Manner” was seemingly shared by those at the ratifying conventions. For instance, at the North Carolina ratifying convention, John Steele stated that “[t]he power over the *manner* of elections [under Article I, §4] does not include that of saying who shall vote.” Rather “the power over the *manner* only enables [States] to determine how these electors shall elect.” In short, the historical context and contemporaneous use of the term “Manner” seem to indicate that the Framers and the ratifying public both understood the term in accordance with its plain meaning.²⁰ Sadly, Justice Thomas does not reflect the letters of Madison or Jefferson about District based ELECTORS.

Finally, Justice Thomas reasons that interpreting the term “manner” as conveying a broad power of determination would mean that the term “manner” is used in two completely different ways in two “parallel” provisions in the Constitution. Article I, section 4, clause 1 of the Constitution, the Elections Clause, states that “[t]he times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof.”²¹ The Supreme Court has interpreted the term “manner” in that provision to include only “a grant of authority to issue procedural regulations,” not “the broad power to set qualifications.”²² According to Justice Thomas, the term “manner” in the Presidential Electors Clause should be read in a way that is consistent with the use of that term in the Elections Clause.²³ The U.S. Supreme Court has long held that the legislature’s duty under the Elections Clause to establish the times, places, and manner of holding federal elections is couched in the state legislature’s lawmaking function.²⁴

Again
ELECTION
issues are
under the duty
of the
Legislature.

Equal protection; one person, one vote So much in this to “contest”, that a separate sheet will be necessary.
The current “Winner Take All” for Electors (Hamilton Innovation of 1796) effectively under-represents Country vs City Voters.
As Justice Thomas shows in *Chiafalo*, a plain-meaning analysis of the Presidential Electors Clause and the Framers’ original understanding of that clause show that the state legislature’s role in appointing electors is only to direct the *manner* of appointment. It is true that the legislature could, by law, give itself the power to appoint the state’s presidential electors, as was the case in a number of states after the Constitution was ratified.²⁵ However, as the U.S. Supreme Court held in *Bush v. Gore*, once presidential electors have been appointed under state law giving the people the power to elect the state’s presidential electors, rules established under the Equal Protection Clause of the Fourteenth Amendment governing the right to vote apply, especially the rule of one person, one vote. The legislature may not unilaterally unseat or reverse the votes of the slate of presidential electors chosen by the people at the presidential election.

To be truly “Equal Protection” for ALL voters, each voter would vote for ONE ELECTOR for the Congressional District in which they are registered to vote, and TWO ELECTORS for the State in which they are registered to vote. NOW the City Voters dominate, and get ALL the ELECTORS. George Washington warned against Geographic Discriminations, the Hamilton Innovation of 1796 magnifies Geographical Discriminations.

²⁰ *Id.* (emphasis in original) (internal citations omitted).

²¹ [U.S. Const. art. I, §4, cl. 1.](#)

²² *Chiafalo*, 140 S. Ct. at 2330-31 (Thomas, J., concurring) (internal quotations and citations omitted).

²³ *Id.*

²⁴ See [Ohio ex rel. Davis v. Hildebrandt](#), 241 U.S. 565 (1916); [Hawke v. Smith \(No. 1\)](#), 253 U.S. 221 (1920); [Smiley v. Holm](#), 285 U.S. 355 (1932); [Arizona State Legislature v. Arizona Independent Redistricting Commission](#), 576 U.S. 787 (2015).

²⁵ [Bush v. Gore](#), 531 U.S. 98, 104 (2000) (per curium).

In Wisconsin, as in every other state, the state legislature has given the people of the state the power to appoint presidential electors at an election, and the legislature has no role in certifying the results of an election.²⁶ Instead, the legislature has delegated the authority to certify the results of presidential elections to the executive branch, including the governor.²⁷ As such, the legislature has no unilateral authority to reverse the results of the election, as certified by the state's executive branch according to state law. In *Bush v. Gore*, the Supreme Court held that once the franchise is given to the people of the state, through the lawmaking process, to elect presidential electors, the state may not by later action value one person's vote over another:

Yet it retains the DUTY of Oversight of FAIR and HONEST ELECTIONS, so when FRAUD is revealed it has the DUTY to CORRECT the ELECTION.

Bush v. Gore was "Judicial Error", in the proper resolution was the USC Contingent Vote process.

When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter. . . . The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. *Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.* See, e.g., *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665, 16 L. Ed. 2d 169, 86 S. Ct. 1079 (1966) ("Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.").²⁸

Not really the cause with "Winner Take All", where the Country Voter is effectively denied his vote for his District ELECTOR.

Justices have failed to see the INJUSTICE of the "Winner Take All" innovation to the Country Voter.

A legislature acts arbitrarily when it acts in a manner that is "not restrained or limited in the exercise of power" or by its actions governs "by absolute authority."²⁹ That is what the DePerno Memo proposes: that the legislature act unilaterally outside of the lawmaking process. Reversing the results of the presidential election by fiat would also, under *Bush v. Gore*, constitute disparately valuing one person's vote over that of another.

NOT by "fiat" rather by DUTY to FAIR and HONEST Elections
If the Election is marred by FRAUD, the LEGISLATURE has the DUTY to STOP and REVERSE the FRAUD.

Proof of fraud

While the state legislature may not take any action with respect to a presidential election that violates the equal protection rights of voters, Attorney DePerno would argue that the 2020 presidential election was fraudulent, violating the equal protection rights of Trump voters by not seating the Republican slate of presidential electors. Aside from the fact that the plain meaning of the Presidential Electors Clause does not support the DePerno Memo's claims with respect to the state legislature's authority, the memo never addresses how fraud should be established in such a manner as to satisfy, as it must under *Bush v. Gore*, the equal protection rights of the

Author uses "Dog Whistle" term of "Trump Voters", when really it is more of an issue of Discrimination against Country in favor of City Voters

²⁶ See Appendix A: The Electoral College process in Wisconsin. All but two states currently use a winner-take-all popular election for selecting their presidential electors. Maine and Nebraska split their electoral college votes based on which candidates win the overall popular vote in the state, as well as which candidates win the vote in each congressional district. The ME & NE manner is consistent with the Framers vision of 1787, undermined by 1796 Hamilton innovation.

²⁷ *Id.*

²⁸ *Bush*, 531 U.S. at 104-05 (emphasis added).

²⁹ "Arbitrary." Merriam-Webster.com. <https://www.merriam-webster.com/dictionary/arbitrary>.

citizens of the state who voted for Biden, who was certified as the winner in accordance with state law.³⁰ *IAW with state law but ignoring FRAUD, and Legislature's attempts to correct the Fraud. Footnote 30 is "self-serving" report.*

The DePerno Memo never addresses how much proof of fraud is required, what standard of proof is to be applied (e.g., beyond a reasonable doubt), or the processes by which the state legislature is to establish proof of fraud to such a degree as to warrant overturning the results of the state's presidential election when almost exactly half of the electorate voted for the winning candidate.³¹

The FRAUD facts should be investigated by the Legislature, but should be presented to Citizens in County Grand Juries.
The state legislature is the political branch of state government charged with making laws. While the legislature has inherent authority to conduct investigations for purposes of making laws and exercising effective oversight, and may make referrals for possible criminal prosecution based on such investigations, the state legislature is not equipped to make definitive findings of fraud or fashion remedies outside of the lawmaking process to address election fraud. That is the role of the judicial branch in the American system of government.³² If a violation of state law occurs in the selection of presidential electors, the courts are charged with adjudicating such claims, as with other violations of state law. *NO, it is NOT the Judicial Branch, it is DUTY of the 4th Branch, the Grand Jury.*

The Ninth and Tenth Amendments *Probably the "strongest" argument in this Rebuttal of DePerno, because of the absence of case law on 9th and 10th Amendments.*

Apart from the Presidential Electors Clause, the DePerno Memo further argues that the state legislature may recall the state's presidential electors under the Ninth and Tenth Amendments.³³ The memo cites no authority or historical precedent for this claim. There is no lawful basis for the state legislature to act unilaterally outside of the lawmaking process under either of those amendments.

The [Ninth Amendment](#) provides, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The [Tenth Amendment](#) provides, "The powers not delegated to the United States by the Constitution, nor prohibited by it

³⁰ See Appendix A: The Electoral College process in Wisconsin.

³¹ The DePerno Memo typically states that the state legislature may recall presidential electors "upon proof of fraud," "upon demonstrable proof of fraud," "upon a proper showing" of fraud, or upon a "demonstration of fraud." DePerno Memo at 1 to 4. However, the memo never discusses how such proof is to be definitively established or what level of fraud must be proven for the results of the election to be conclusively determined to be unquestionably the result of fraud. This omission is crucial because the equal protection rights of Biden voters must be protected no less than the equal protection rights of Trump voters. *No the omission is NOT critical, it is the duty of CITIZENS on many a Grand Jury.*

³² At least one federal court has indicated that the Electoral Count Act, which allows members of Congress to object to a state's Electoral College votes when they are counted, generally on the January 6 following the election, is the exclusive avenue for challenging presidential electors certified under state law. *Trump v. Kemp*, 511 F. Supp. 3d 1325, 1335-36 (N.D. GA 2021) ("Plaintiff has failed to cite any statute or case that provides for any mode of challenging electoral votes already certified and counted by the Electoral College outside the congressional method outlined in 3 U.S.C. § 15. Thus, this Court finds no grounds upon which to independently order the decertification of Georgia's election results."). However another federal court has indicated that Electoral College votes may be challenged in court even after having been counted in Congress. Additionally, it is possible that a state court might entertain such a claim. *Robinson v. Bowen*, 567 F. Supp. 2d 1144, 1147 (N.D. CA 2008) ("Judicial review -- if any -- should occur only after the electoral and Congressional processes have run their course.").

³³ DePerno Memo at 2-4.

to the states, are reserved to the states respectively, or to the people.” The DePerno Memo’s argument appears to be that the state legislature may, on behalf of the state or the people under the Tenth Amendment, take unilateral action to reverse the results of the state’s presidential election in order to protect the people’s rights under the Ninth Amendment. *Logical, yet not before done.*

However, there is no right of the people to vote for presidential electors, whether under the Constitution or the Ninth Amendment. The state legislature determines the manner of appointment of presidential electors. While every state legislature has now given the people the right to vote for presidential electors at an election, as the Supreme Court said in *Bush v. Gore*, a state legislature could by law take the franchise away from the people and give itself the sole authority to choose the state’s presidential electors. Importantly, the right to vote or to equal protection in the elections context—one person, one vote—has never been couched in the Ninth Amendment. Instead, voters’ rights are generally protected under the Equal Protection Clause of the Fourteenth Amendment. *Interesting points by author on 9th and 10th Amendments, yet what of Equal Protection of 14th amendment in relation to 1796 Hamilton Geographic Discriminations innovation?*

With respect to the Tenth Amendment, Justice Thomas argues in *Chiafalo* that the state’s power to bind electors to vote for their pledged candidates is a power reserved to the state or the people under the Tenth Amendment and not, as the majority of the Supreme Court has long held, a “broad power of determination” provided under the Presidential Electors Clause. Nevertheless, the state legislature acts on behalf of the state or the people under the Tenth Amendment through the enactment of laws. That is the Tenth Amendment in action. The Tenth Amendment confers no power on the state legislature, which is the state’s lawmaking body, to take unilateral action, ostensibly on behalf of the people, apart from making laws, especially in an area—the right to vote—that receives such strong protections under the Constitution. *While the 10th Amendment confers no such power the body of this Constitution DOES give the STATE LEGISLATURE the power to determine the manner of selection of Electors. The USC does not limit that DUTY.*

The lawmaking process

Finally, regardless of whether the state legislature has an affirmative duty or a “broad power of determination” to direct the manner of appointment of presidential electors under the Presidential Electors Clause or whether the state legislature’s power to bind or otherwise regulate the conduct of presidential electors is couched in the Tenth Amendment, as Justice Thomas argues, there is no basis for the DePerno Memo’s assertion that the state legislature may act unilaterally to recall presidential electors outside of the lawmaking process.³⁴ *The Legislature “Makes the laws” so can “un-make” a prior law as to the manner of selecting ELECTORS, especially in presence of FRAUD.*

The Presidential Electors Clause and the Elections Clause are, as Justice Thomas says, two “parallel” provisions in the Constitution.³⁵ Chief Justice Roberts, in an opinion joined by Justices Antonin Scalia, Samuel Alito, and Clarence Thomas, has said that the two provisions show “considerable similarity.”³⁶ The Supreme Court has long held that the Elections Clause assigns authority to the state legislature over the times, places, and manner of federal elections according

³⁴ See DePerno Memo at 4.

³⁵ *Chiafalo*, 140 S. Ct. at 2324, 2330 (Thomas, J. concurring).

³⁶ *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 839 (2015) (Roberts C.J. dissenting).

to the state legislature's lawmaking function.³⁷ The same holds for the parallel Presidential Electors Clause, and every state legislature in the country has enacted laws establishing the manner of appointment of presidential electors, rather than acting "*sua sponte*," as the DePerno Memo suggests.³⁸ Moreover, as discussed above, there is no basis for the proposition that the Tenth Amendment confers any inherent power on the state legislature apart from its lawmaking function.³⁹

If a Legislature sees in process a Rape (of Ladies Liberty and Electoral Justice), because it is NOT the "Executive Branch" vested with Police powers to stop the Rape, must it take no action because it has never before been faced with such a situation? Or should it exercise what POWERS it DOES have to stop the Rape?

Conclusion

Cleverly Manipulated "Perfect Storm"

The 2020 presidential election was a perfect storm. With a dramatic increase in the number of voters voting absentee, the use of novel election practices with respect to absentee balloting, millions of dollars in private moneys being used for election administration, widespread allegations of election fraud and irregularities, and the election itself being decided by extremely narrow margins in just a few swing states, it is understandable that some voters would look for some kind of remedy. For the reasons discussed in this memorandum, however, ~~if such a remedy were to exist, it would have to be sought in court. The state legislature does not have inherent authority to reverse the results of the 2020 presidential election as the DePerno Memo would have it,~~ despite allegations of election fraud. The judicial branch is the constitutional forum for adjusting violations of law.

Were EITHER voted upon by the Legislature ?

Under this Constitution the LEGISLATURE is the "judge" of Elections NOT the Judiciary.

I hope this information is helpful, but please let me know if the LRB can be of further assistance in this matter.

Only the Legislature has the authority, and DUTY to JUDGE the Election. Crimes connected to FRAUD are decided by We The People in a Grand Jury in many counties where Fraud was suspected.

³⁷ [Ohio ex rel. Davis v. Hildebrand](#), 241 U.S. 565 (1916); [Hawke v. Smith \(No. 1\)](#), 253 U.S. 221 (1920); [Smiley v. Holm](#), 285 U.S. 355 (1932); [Arizona State Legislature v. Arizona Independent Redistricting Commission](#), 576 U.S. 787 (2015).

³⁸ DePerno Memo at 4

³⁹ The DePerno Memo never argues that the state legislature could pass a law reversing the results of the 2020 presidential election. It seems highly unlikely that a court would uphold such a law, especially considering the reasoning of *Bush v. Gore* with respect to the voters' equal protection rights once given the franchise with respect to choosing presidential electors.

Appendix A: The Electoral College process in Wisconsin

The Electoral College process in Wisconsin is governed by rules established by law by the Wisconsin Legislature and requirements provided in the U.S. Constitution.

Article II, section 1, clause 2 of the U.S. Constitution, the Presidential Electors Clause, requires each state to appoint presidential electors “in such manner as the legislature thereof may direct.”⁴⁰ In Wisconsin, as in every other state, the legislature has directed by law that presidential electors be appointed by a vote of the people at the presidential election.⁴¹ A vote for the candidates for president and vice president named on the ballot is a vote for those candidates’ electors.⁴²

After the election, the statutes require the Wisconsin Elections Commission to prepare a certificate that certifies the results of the presidential election, which the governor then signs, seals with the great seal of the state, and transmits to the U.S. General Services Administration.⁴³ The governor also prepares six duplicate originals of the certificate and delivers them to one of the presidential electors on or before the date the presidential electors convene to cast their votes for president and vice president.⁴⁴

The winning presidential and vice presidential candidates’ slate of electors convenes at the state capitol “at 12:00 noon the first Monday after the 2nd Wednesday in December,” which occurred on December 14, 2020, following the last presidential election.⁴⁵ Wisconsin is a “winner-take-all” state. When the state’s presidential electors convene, the statutes require them to “vote by ballot for that person for president and that person for vice president who are, respectively, the candidates of the political party which nominated them.”⁴⁶

An “innovation” that is contrary to Equal Protection. country voters lose under Winner Take All.

The Twelfth Amendment to the U.S. Constitution governs the process once the electors convene. The electors are required to cast separate ballots for president and vice president.⁴⁷ The electors then must make separate lists of the persons voted for as president and the persons voted for as vice president and the number of electoral votes cast for each.⁴⁸ Once the lists are completed, the electors are required to sign and certify the lists and “transmit [the lists] sealed to the seat of the government of the United States, directed to the President of the Senate,” who, on the January 6 following the election, opens and reads the electoral college votes of each state before a joint session of Congress.⁴⁹ The Electoral Count Act provides a process by which members of Congress may object to the Electoral College votes of any state.⁵⁰

Senate President Pence ignored the U.S. LAW of the Electoral Count Act, on 6 Jan. 2021.

⁴⁰ [U.S. Const. art. II, §1, cl. 2.](#)

⁴¹ [Wis. Stat. § 7.75 \(2\).](#)

⁴² [Wis. Stat. § 5.10](#)

⁴³ [Wis. Stat. 7.70 \(5\) \(b\).](#)

⁴⁴ *Id.*

⁴⁵ [Wis. Stat. § 7.75 \(1\).](#)

⁴⁶ [Wis. Stat. § 7.75 \(2\).](#)

⁴⁷ [U.S. Const. amend. XII](#); [3 U.S.C § 15.](#)

⁴⁸ [U.S. Const. amend. XII.](#)

⁴⁹ *Id.* The vice president is the president of the U.S. Senate.

⁵⁰ [3 U.S.C § 15.](#)